

UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO <b>SENTENCING MINUTE SHEET</b>											
CR No:		<b>18-2753 KG</b>			USA vs.:		<b>McCLAIN, JR., ET AL.</b>				
Date:		<b>6/4/2019</b>			Name of Deft:		<b>EDWARD FLEMING</b>				
Before the Honorable:				<b>KENNETH J. GONZALES, UNITED STATES DISTRICT JUDGE</b>							
Time In/Out:		<b>1:29 - 2:10 PM</b>			Total Time in Court (for JS10):		<b>41 MINUTES</b>				
Clerk:		<b>CHRIS EUBANKS</b>			Court Reporter:		<b>DANNA SCHUTTE EVERETT</b>				
AUSA:		<b>MARIA ARMIJO</b>			Defendant's Counsel:		<b>ORLANDO MONDRAGON</b>				
Sentencing in:		<b>LAS CRUCES</b>			Interpreter:		<b>NONE</b>				
Probation Officer:		<b>HEIDI SAMPLE/DAVID MILLS</b>			Sworn?				Yes		No
Convicted on:		<input checked="" type="checkbox"/>	Plea		Verdict	As to:		Information		<input checked="" type="checkbox"/>	Indictment
If Plea:		<input checked="" type="checkbox"/>	Accepted		Not Accepted	Adjudged/Found Guilty on Counts:		<b>7 &amp; 8</b>			
If Plea Agreement:			Accepted		Not Accepted	<input checked="" type="checkbox"/>	No Plea Agreement		Comments:		
Date of Plea/Verdict:		<b>11/26/2019</b>			PSR:		<input checked="" type="checkbox"/>	Not Disputed			Disputed
PSR:		<input checked="" type="checkbox"/>	Court Adopts PSR Findings			Evidentiary Hearing:			Not Needed		<input checked="" type="checkbox"/> Needed
Exceptions to PSR:											
<b>SENTENCE IMPOSED</b>				Imprisonment (BOP): <b>46 MONTHS AS TO EACH COUNT, SAID TERMS TO RUN CONCURRENTLY</b>							
Supervised Release:		<b>3 YEARS AS TO EACH COUNT, SAID TERMS TO RUN CONCURRENTLY</b>				Probation:					
500-HOUR DRUG PROGRAM				BOP SEX OFFENDER PROGRAM				OTHER:			
Court recommends ICE begin removal proceedings immediately or during service of sentence								<input checked="" type="checkbox"/>		ICE not applicable	
SPECIAL CONDITIONS OF SUPERVISION											
<input checked="" type="checkbox"/>	Participate in/successfully complete subst abuse program/testing				<input checked="" type="checkbox"/>	Reside halfway house UP TO 6 MONTHS					
<input checked="" type="checkbox"/>	Participate in/successfully complete mental health program and take all mental health medications prescribed					Register as sex offender					
<input checked="" type="checkbox"/>	Refrain from use/possession of alcohol/intoxicants					Participate in sex offender treatment program					
<input checked="" type="checkbox"/>	Submit to search of person/property					Possess no sexual material					
<input checked="" type="checkbox"/>	No contact with co-deft(s)/co-conspirator(s)					No computer with access to online services					
	No entering or loitering near victim's residence					No contact with children under 18 years					
	Provide financial information					No volunteering where children supervised					
<input checked="" type="checkbox"/>	Grant limited waiver of confidentiality					Restricted from occupation with access to children					
	Participate in an educational or vocational program					No loitering within 100 feet of school yards					
<input checked="" type="checkbox"/>	Refrain from the use and possession of synthetic cannabinoids or other legally sold designer drugs					Not possess, sell, offer for sale, transport, cause to affect interstate commerce, import, or export any drug paraphernalia					
	<b>OTHER:</b>										
Fine: \$						Restitution: \$					
SPA: \$		<b>200.00</b> (\$100) as to each Count				Payment Schedule:		<input checked="" type="checkbox"/>	Due Imm.		Waived
OTHER:											
<input checked="" type="checkbox"/>	Advised of Right to Appeal			Waived Appeal Rights per Plea Agreement							
<input checked="" type="checkbox"/>	Held in Custody			Voluntary Surrender							
<input checked="" type="checkbox"/>	Recommended place(s) of incarceration:			<b>FCI FLORENCE, COLORADO, IF ELIGIBLE OR FCM Ft. WORTH, Ft. WORTH, TEXAS, IF ELIGIBLE</b>							
Dismissed Counts:											
OTHER COMMENTS:				<b>DEFENSE COUNSEL ADDRESSES THE COURT AND ASKS FOR A LOW-END SENTENCE. GOVERNMENT RESPONDS AND ASKS FOR A SENTENCE WITHIN THE GUIDELINE RANGE. DEFENDANT ALLOCUTES. COURT STATES FINDING AND SUSTAINS OBJECTION TO THE 4-LEVEL ENHANCEMENT.</b>							

## **EVIDENTIARY HEARING**

**Court: Inquires of Mr. Mondragon as to objections.**

**Mr. Mondragon: Responds; basically argument.**

**Ms. Armijo: Understanding not an evidentiary, no witnesses.**

**Mr. Mondragon: Responds; no lab results that it was drugs and issue of money being counterfeit, no access to it. No felony there, so 4-level enhancement would apply.**

**Court: Inquires of Ms. Armijo as to what the United States would establish.**

**Ms. Armijo: Responds; pending lab results; looking to see if a field test was done; nothing else in addition as far as evidence or an actual lab result.**

**Court: Inquires of defendant as to how he is feeling. Advises of documents which have been reviewed. Outline of guidelines, base offense level, criminal history category and guideline imprisonment range. Objection to the 4-level enhancement.**

**Ms. Armijo: Responds; admission in the Presentence Report.**

**Court: Inquires as to the firearms were traded for drugs.**

**Ms. Armijo: Responds.**

**Mr. Mondragon: Defendant disputes statement that he admitted exchange of the firearms for the drugs.**

**Court: Inquires as to what the United States would show by a preponderance that the enhancement four-level enhancement applies.**

**Ms. Armijo: Responds; counterfeit money issue; addresses issue of methamphetamine and firearm. Admitted to giving methamphetamine and \$200 to co-defendant for the firearm, based on defendant's own statement.**

**Court: Inquires of Mr. Mondragon as to disputing statement made (reads from Presentence Report).**

**Mr. Mondragon: Defendant admits to making that statement.**

**Court: Inquires of defendant that he is conceding he gave methamphetamine to co-defendant.**

**Mr. Fleming: Responds.**

**Court: Challenge as to the felony of distributing methamphetamine.**

**Mr. Mondragon: Maintaining challenge it is not methamphetamine without the lab report.**

**Court: Have field test but no lab report.**

**Ms. Armijo: Correct.**

**Court: Will take that under advisement at the time; inquires as to the counterfeit money.**

**Ms. Armijo: Does not have money but a picture. No evidence to offer this afternoon.**

**Mr. Mondragon: Responds.**

**Court: Surprised no evidence for this hearing. Was expecting to hear some evidence or see some evidence to support that upward adjustment.**

**Ms. Armijo: Responds; unaware of conversations between Mr. Williams and Mr. Mondragon. Told no evidence was to be presented. Response by Mr. Williams to the objection. Unaware matter was set for evidentiary, per se.**

**Court: Mr. Williams' response addresses the counterfeit money. Looking at Exhibit 1 to the response, unable to determine legitimacy of money. Not helpful to make an evidentiary finding. As to the counterfeit, the upward adjustment of 4-levels is not appropriate. As to statement made as to the drugs being methamphetamine.**

**Mr. Mondragon: Responds.**

**Court: Not necessarily be the deciding factor. Enhancement as to the purpose of the guideline and not as to a charge. Still would like to know how the United States would show by the preponderance of the evidence that it was methamphetamine.**

**Ms. Armijo: Would be the statement made by the defendant.**

**Court: Burden of the United States that it was methamphetamine.**

**Mr. Mondragon: Nothing else.**

**Court: As to the Presentence Report.**

**(Court proceeds to sentencing)**